IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

F.A.O. 119 of 2007

Date of Decision: 29th June, 2007

Hardayal Singh and others. ***…..Appellants.***

Versus

Leku Ram and others. ***……Respondents.***

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Appellants:	Mr. Ramakant Sharma, Advocate.
For respondents No: 1, 2 & 4.	Mr. Vishal Panwar, Advocate.
Respondents No: 3,5 & 6.	Ex-parte.

Dev Darshan Sud, Judge.

This appeal has been filed by the appellant before the learned appellate Court against the judgment and order dated 8th March, 2007 dismissing an application under Order 9, Rule 4 of the Code of Civil Procedure in which a prayer was made for setting aside the order dated 2.7.2004 in an application under Order 22, Rule 3 of the Code of Civil Procedure for bringing on record the legal representatives of the sole deceased appellant Khushi Ram and another application under Order 9 Rule 9 for restoration of the appeal which was instituted by the appellant.

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[1] Whether Reporters of Local Papers may be allowed to see the judgment?

A common order was passed by the learned District Judge in two applications as noticed here-in-before. The brief facts are that the sole appellant Khushi Ram filed a suit for permanent prohibitory injunction restraining the defendants from interfering in the suit land as described in the plaint. The learned trial Court, dismissed the suit with costs on the findings as arrived at by it. An appeal was preferred against the dismissal of the suit. On 15.10.2004, two applications one under Order 9, Rule 4 and second application under Order 9, Rule 9 were instituted by the appellant praying for restoration of the appeal to its original number and a prayer that the legal representatives be brought on record. The gist of the pleadings in the application under Order 9, Rule 4 was that the appellant Khushi Ram had died on 4.5.2004. By an order dated 2.7.2004, the Court had dismissed the appeal for non-appearance of the appellant. It was prayed that the order be recalled as the legal representatives had moved for being impleaded as appellants. To similar effect are the averments made in the application under Order 9, Rule 9 of the Code of Civil Procedure. The learned trial Court, dismissed both the applications holding that no sufficient cause had been shown.

I have heard learned counsel appearing for the parties and have gone through the record. Learned counsel for the appellants also submits that in view of the law laid down by the Hon'ble Supreme Court in **(2003) 3 SCC 272, Sardar Amarjit Singh Kalra and others** vs. **Pramod Gupta and others**. The Court should not take a technical view in procedural matters.

There can be no dispute about this proposition of law which has been laid down. However, this does not imply that parties to a litigation should display lethargy and treat the provisions of Code of Civil Procedure with scant respect. The litigant must show bonafide reason for non-compliance and not act in a manner which display a cavalier attitude

to the Court or the provisions of law. Same effort has to be made and to be shown as a step for compliance with the provisions of law even if they be procedural has been made lest the provisions be treated than as having been effaced from the statute book.

I have considered the totality of the facts and circumstances of the case. Although, the application is not happily drafted, there can be no doubt that the parties cannot be penalized for the fault of the counsel who has drafted and presented the application in the Court. In these circumstances, this appeal is allowed subject to the condition that the appellants will pay costs 10,000/- rupees to the respondents. The order of the District Judge is set aside. The appeal is directed to be restored to its original number and the legal representatives of the deceased Khushi Ram are ordered to be brought on record of the case.

Parties will appear before the District Judge on 17th August, 2007.

29th June, 2007 **(Dev Darshan Sud),**
(ks) **Judge.**